IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 22371 of 2007(L)

PETITIONER:

C.S. GEORGE,S/O. SCARIA, AGED 48,
CHENNILATHUKUNNEL HOUSE,
P.O.KARTHIKAPURAM.
ARANGAM DESOM, TALIPARAMBA TALUK,
KANNUR DISTRICT.

BY ADV. SRI.BLAZE K.JOSE
SRI.K.K.SUNIL KUMAR (IDUKKI)

RESPONDENT:

SECRETARY,
UDAYGIRI GRAMA PANCHAYATH,
P.O.,KARTHIKAPURAM,
ALAKODE VILLAGE, TALIPARAMBA TALUK.

BY ADV. SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.22371/2007 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REGD. ASSIGNMENT DEED NO.3311/1986 OF THE S.R.O.ALAKODE EXECUTED BY KAPPIL THOMAS IN FAVOUR OF THE PETITIONER DTD. 17/10/1986.**

EXT.P2: **COPY OF THE PURCHASE CERTIFICATE ISSUED BY THE LAND TRIBUNAL TALIPARAMBA TO THE PETITIONER DTD. 29/06/1987.**

EXT.P3: **COPY OF THE ORDER OF THE LAND TRIBUNAL TALIPARAMBA IN S.M.P.NO.63/1987 DTD. 25/04/1987.**

EXT.P4: **COPY OF THE REVENUE RECEIPT ISSUED BY THE V.O. ALAKODE TO THE PETITIONER DTD. 23/05/2007.**

EXT.P5: **COPY OF THE BUILDING TAX RECEIPT ISSUED BY THE RESPONDENT TO THE PETITIONER DTD. 26/06/2006.**

EXT.P6: **COPY OF THE NOTICE ISSUED BY THE RESPONDENT TO THE PETITIONER DTD.22/05/2007.**

EXT.P7: **COPY OF THE JUDGEMENT IN O.S.NO.160/07 DTD. 26/06/07.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 22371 of 2007

Dated this the 28th day of November , 2007

JUDGMENT

Under challenge in this writ petition is Ext.P7 notice issued by the respondent Panchayat to the petitioner directing demolition of a building put up by the petitioner on the property comprised in Sy.No.53/1A. The case of the petitioner is that the property belongs to her absolutely by virtue of Ext.P3 Gift Deed executed by her husband who is having absolute title by virtue of Exts.P1 and P2 certificate of purchases. The petitioner approached the Civil Court challenging Ext.P7. Before that Court, it was contended by the Panchayat that a suit is not maintainable since Ext.P7 is a notice issued under the provision of the Land Conservancy Act and the petitioner has remedies under the statute available against Ext.P7. The above contention found favourable with the learned Munsiff, who dismissed the suit.

2. The Panchayat has filed a detailed counter affidavit, wherein it is contended that Ext.P7 was issued by the Panchayat under Section 235W of the Kerala Panchayat Raj Act.

3. Heard Sri. Blaze K.Jose the learned counsel for the petitioner and Sri.M.Sasindran, the learned counsel for the Panchayat. The learned counsel for the petitioner submits that the Panchayat is not entitled to hostile. Ext.P7, at any rate, has to be quashed. The learned counsel for the respondent justified Ext.P7 as notice issued under Section 235W of the Panchayat Raj Act and would request that the petitioner be relegated to other remedies available against Ext.P7.

I have considered the rival submissions. In view of the refutable provision that Ext.P7 does not purport to invoke any statutory provision which enables the Panchayat to issue such notice to the petitioner, I quash Ext.P7. The writ Petition will stand allowed. However, it is made clear that this judgment will not stand in the way of the respondent initiating fresh proceedings against the petitioner with notice and after affording an opportunity to the petitioner to defend the proceedings.

PIUS C. KURIAKOSE,
JUDGE.

Dpk